

Aleutians East Borough
Coastal Management Plan
Public Hearing Draft
August 8, 2005

DEC's comments focus on the Aleutians East Borough Public Hearing Draft enforceable policies. Specific concerns regarding the Resource Inventory and Analysis sections will be addressed during the Concept Approved Draft review.

Administrative Policies – There is nothing in statute or regulations that authorize administrative policies in a coastal district plan. The requirement for district enforceable policies in 11 AAC 114.270 to be clear and concise as to the activities and persons affected by the policy is undermined by the introduction of administrative policies that have no basis in law. Administrative policies contribute to the lack of precision and clarity in what is and is not required to be consistent with an approved coastal district plan. DEC believes that non- enforceable administrative policies are likely to generate controversy.

It is clear the Aleutians East Public Hearing Draft set out administrative policies in order to affect behavior. Under 11 AAC 110.040, DEC is mandated to conduct a consistency review on an activity only against applicable district enforceable policies and statewide standards. DEC will not implement administrative policies.

AS 46.40.100 allows for an authorized party to petition DNR showing that a district coastal management plan is not being implemented. An approved district plan that includes administrative policies raises a number of implementation questions that would not arise if the plan's policies were limited to enforceable policies. DEC believes that the inclusion of administrative policies in the plan will promote confusion over what must be implemented and increase the likelihood of petitions to DNR showing that the district plan's administrative policies are not being implemented. If DNR intends to enforce administrative policies within approved district boundaries, the policies need to be renamed as enforceable policies and meet the requirements of an enforceable policy. Most (if not all) administrative policies in the Aleutians East Public Hearing Draft do not meet the requirements for enforceable policies. Administrative policies do not belong in a coastal district plan approved by the state under AS 46.40.060.

DEC Recommendation: Delete all administrative policies from the Aleutians East Borough Coastal Management Plan.

Policy A-5: Water Bird Habitat

Applicants shall include information in the project application packet that demonstrates that the project will not result in ~~sedimentation~~, channelization, diversion, or damming that would alter the natural hydrological conditions and have a significant adverse impact on habitat important to significant populations of migratory or nesting shorebirds, seabirds, or waterfowl.

Comments - The term “sedimentation” must be deleted from policy A-5. Sediment in fresh and marine water is regulated by DEC through 18 AAC 70, Water Quality Standards under AS 46.03, AS.46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f).

Policy B-1: Bank Stabilization

All stream or lake bank cuts, fills or exposed earthwork adjacent to anadromous and high-value resident fish streams, wetlands or marine waters shall be stabilized, to the extent practicable with consideration of environmental factors, to prevent erosion ~~or sedimentation into adjoining waters~~ during construction, operation and following cessation of development activities.

Comments -The phrase “sedimentation into adjoining waters” must be deleted from policy B-1. Sediment in fresh and marine water is regulated by DEC through 18 AAC 70, Water Quality Standards under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f).

Policy B-2: Design and Siting Criteria

c) The applicant shall identify appropriate measures in the project description that will minimize excessive run-off which might otherwise cause accelerated erosion, and retain natural drainage patterns, ~~surface water quality~~ and natural groundwater recharge areas.

Comments - The term “surface water quality” must be deleted from policy B-2, item c. Water quality is regulated by DEC through 18 AAC 70, Water Quality Standards under AS 46.03, AS 46.04. AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f).

Policy C-2: Erosion

The applicant shall demonstrate in the project description that upland habitats will be managed to minimize excessive runoff which will cause accelerated erosion and to retain natural drainage patterns, ~~surface water quality~~, and natural groundwater recharge areas. Development activities shall minimize removal of existing vegetative cover in erosion-prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native plant species or by other appropriate erosion control measures that emulate natural conditions.

Comments -The term “surface water quality” must be deleted from policy C-2. Water quality is regulated by DEC through 18 AAC 70, Water Quality Standards under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f).

Policy C-4: Dredging and Filling in Waters

Projects that require dredging or filling in streams, rivers, lakes, wetlands, or saltwater areas including tideflats, are not allowed unless the applicant demonstrates in the project

description that the project will be located, designed, constructed, and maintained in a manner so as to:

- d) minimize the amount of ~~waterborne sediment~~ traveling away from the dredge or fill site, and

Comments -The term “waterborne sediment” must be deleted from policy C-4, item d. Sediment in fresh and marine water is regulated by DEC through 18 AAC 70, Water Quality Standards under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f).

E. Sand and Gravel

Policy E-1: Sand and Gravel Extraction

Sand and gravel extraction from offshore areas, inter-tidal areas, estuaries, barrier islands, spits, beaches, riverbeds, lakes, wetlands, and floodplains, will be permitted only where:

- c) no practicable upland site exists with the consideration of environmental and social effects.

Comments -The use of the term “environmental... effects” in Policy E-1, item c, could refer to air, land and water quality. These are matters regulated by DEC under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f). Delete the word “environmental” or clarify that the quality of air, land and water is excluded

Policy E-4: Offshore Mining

- b) Dredge spoils will be re-deposited in areas disturbed by dredging unless the applicant demonstrates in the project description that there will be a substantial public benefit, as determined by the district, would be derived from an alternative disposal method. Mining and mineral processing operations must be compatible with the use of adjacent uplands will to the extent practicable with consideration of social and **environmental** factors.

Comments -The use of the term “environmental factors” in Policy E-4, item b, could refer to air, land and water quality. These are matters regulated by DEC under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f). Delete the word “environmental” or clarify that the quality of air, land and water is excluded

Policy F-5: Location of Energy Facilities

- b) Facilities that could result in significant adverse effects to habitat, including oil storage facilities (with a capacity greater than 660 gallons), muds and cuttings, and sewage ponds, shall have buffer zones of not less than 100 feet and up to 1,500 feet from freshwater supplies, streams, lakes, and wetlands that are important to fish and water birds.

Comments -Policy F-5 (b) must be clarified to exclude matters regulated by DEC under AS 46.03, AS 46.04, AS 46.09 or AS 46.14.

Line 2 includes the term “oil storage facilities (with a capacity greater than 660 gallons)” 18 AAC 75.990 defines "oil storage tank," for the purposes of 18 AAC 75.065 and 18 AAC 75.075 means a container, including storage and surge tank, that is used to store bulk quantities of oil and that has a capacity greater than 10,000 gallons.” Policy F-5 must clarify that oil storage facilities over 10,000 gallons are excluded from this policy.

Line 2 refers to “muds and cuttings” as a facility that could result in significant adverse effects to habitat. The district needs to clarify what facility “muds and cuttings” is referring to. The disposal of muds and cuttings is a matter regulated by DEC Chapter 60 which applies to any person who accumulates, stores, transports, treats, or disposes of solid waste.

Line 2 and 3 refers to “sewage ponds”. Sewage treatment facilities are regulated by DEC Wastewater regulation 18 AAC 72.215 which requires that “a person who disposes of domestic wastewater in this state must have a permit issued by the department for that disposal”.

Oil storage facilities over 10,000 gallons, disposal of muds and cuttings, and sewage ponds are all matters regulated by DEC under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of a coastal district enforceable policy according to ACMP regulation 11 AAC 114.270 (f).

Policy F-6: Dismantlement, Restoration and Rehabilitation

Applicants shall include a plan for the dismantlement, restoration and rehabilitation of oil and gas facilities with the consistency certification. This plan shall include measures to return the area to pre-project conditions to the extent practicable with consideration of social and environmental factors.

Comments -The use of the term “environmental factors” in Policy F-6 could refer to air, land and water quality. These are matters regulated by DEC under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f). Delete the word “environmental” or clarify that air, land and water quality is excluded

Policy G-1: Transmission Lines

Transmission lines will be allowed only if the applicant demonstrates, in the project description, the lines will be located, designed, constructed, and maintained in a manner so as to not result in significant adverse impacts to fish and wildlife populations and habitat. Existing transportation corridors will be used for transmission lines to the extent practicable with consideration of social and environmental factors. Where existing corridors cannot be used, the construction of new lines will avoid creating permanent access corridors and shall minimize damage to the land surface.

Comments- The use of the term “environmental factors” in Policy G-1, line 5 could refer to air, land and water quality. These are matters regulated by DEC under AS 46.03, AS

46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f). Delete the word “environmental” or clarify that air, land and water quality is excluded

I. Recreation and Tourism

Policy I-1: Commercial Recreation

Commercial recreational use, will be located, designed, and conducted to avoid or minimize loss or displacement of existing fish and wildlife populations, interference with subsistence or recreational harvest, and adverse impacts on the physical, biological and cultural features of the area.

Comments- The use of the term “physical....features” in Policy I-1, line 3, could refer to air, land and water quality. These are matters regulated by DEC under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f). Delete the word “physical” or clarify that air, land and water quality is excluded

K. Important Habitat Areas Previously Established as Special Use Areas

K-2 Nelson Lagoon Important Habitat Area

K-3 Izembek Lagoon Important Habitat and Subsistence Area

K-4 Bechevin Bay Important Habitat Area

K-5 Unimak Pass Important Habitat Area

K-6 Pavlof Bay/Canoe Bay Special Habitat Area

c) Tidel flats, estuarine waters, and marine waters shall not be used as a disposal site for dredged materials, processed materials from mining activities, or oil contaminated drilling muds or drilling muds with additives likely to be harmful to fish and wildlife except where dredge materials are used in an authorized structure or facility.

Comment – The disposal of dredged, processed materials from mining, oil contaminated drilling muds or drilling muds with additives are matters regulated by DEC Solid waste regulations. The definition of disposal in 18 AAC 60.990 “(39) "disposal" means the deposit of a solid or liquid waste into or onto the water or land of the state, whether the waste is contained or uncontained, by discharging, injecting, dumping, spilling, leaking, placing, discarding, or abandoning the waste so that the waste or any part or byproduct of the waste might enter the environment.” Policy “c” in K-2, K-3, K-4, K-5, K-6 must be revised to exclude matters regulated by DEC under AS 46.03, AS 46.04, AS 46.09 or AS 46.14 and cannot be part of an enforceable policy according to ACMP regulation 11 AAC 114.270 (f).